

Opening Remarks by Amal Clooney
Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub-Committee, Inquiry into Targeted Sanctions
14th May 2020

Good morning Mr Chair. I am grateful for the invitation to address your committee today and I thank you for your attention to the issue of human rights at this difficult time in the world. I am so heartened and impressed as I read about the great progress that Australia and New Zealand have made in responding to the health crisis and I hope the trajectory continues to be a positive one.

I am a barrister from Doughty Street Chambers in London, specializing in international law and human rights. I am also admitted to practice in the United States and I am a Visiting Professor at Columbia Law School. I am appointed to the UK Attorney-General's panel of experts on public international law and on the prevention of sexual violence in conflict. And I am currently the UK's Special Envoy on Media Freedom and Deputy Chair of the High-Level Panel of Legal Experts convened at the request of the governments of the UK and Canada.

As a barrister I focus on representing victims of human rights abuses. And I see through this work that the current health crisis has only exacerbated what was an existing *human rights* crisis. Abuses thrive when no one is watching, and new powers seized by autocratic governments in the name of a pandemic are unlikely to be rescinded when it has passed. Yet in the last two months, more than 80 governments have rushed through emergency laws granting them sweeping new powers over their people. Governments have criminalised so-called 'fake news' on the pandemic and had scores of journalists arrested while *deadly untruths* have spread. Meanwhile, international crimes – from genocide in Iraq and Myanmar, to war crimes in Syria and Yemen – remain unpunished, as leading governments are distracted, divided or simply disinterested. It seems at times that there is so much 'bad news' in the world that our moral nerve endings have been deadened – meaning abuses will thrive and impunity will remain the norm.

That is why what you are considering here today is so important. You, as leaders of one of the world's leading democracies, can do something about the global human rights crisis. You may not be able to solve every problem or respond to every abuse, but you can make sure that your country is not a safe haven for despots and war criminals. You can send a message to those who engage in corruption and human rights abuses that Australia's banks, schools and beaches are off limits. That there are certain values you don't only stand for: but will stand UP for, through the consistent and fair use of asset freezes and travel bans against abusers of human rights.

So I commend Foreign Minister Payne for convening this inquiry and all of you for your work in advancing it. I support the proposal that Australia should adopt a new law allowing for targeted sanctions against human rights abusers around the world –sometimes referred to as a 'Magnistky' law. I have submitted to the Inquiry a report that I authored comparing existing targeted-sanctions regimes and outlining 11 recommendations for how legislation should be structured. These recommendations were endorsed by a 15-member Panel of Legal Experts chaired by the former President of the UK Supreme Court, Lord Neuberger, who you will be hearing from later today. And the recommendations were endorsed by representatives

of the United Nations, the International Bar Association and leading NGOs. The report specifically highlights Australia as a state that could very usefully adopt Magnitsky legislation, so I am very pleased to be part of this conversation today. And I am of course happy to answer any questions that arise from your review of this written submission.

Let me make just three points and reserve the rest of the time available for our discussion:

FIRST a new targeted sanctions regime would give Australia one of the most effective tools for human rights enforcement.

Victims of human rights abuses often have limited points of pressure against a government or group that is attacking them. Sadly, at a time when powerful governments are embracing isolationism, and when the US, China and Russia are united in their disdain for the International Criminal Court, sanctions are all too often the *only* possible recourse. And they are an important tool because they can raise the cost of abusive behaviour by denying abusers access to travel, cash and luxury goods.

As my fellow barrister and your fellow Australian Geoffrey Robertson has put it: '[i]f all advanced democracies, with desired banks, schools and hospitals', used sanctions against human rights abusers, 'the pleasures available to the cruel and the corrupt would be considerably diminished. They [may] not be ... in prison, but they will not be able to spend their profits ... 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'.

I have seen in my own work as a human rights lawyer how useful such sanctions can be. Often the *spectre* of their potential use is a game-changer, with a state suddenly far more attentive or even willing to *resolve* a case once sanctions are on the table. In recent years I have reached out to the Australian government for support on human rights issues in the region – including, last year, the case of two Reuters journalists arbitrarily detained in Myanmar. It is essential to have Australia's leadership on such issues, particularly in the absence of any regional human rights court in Asia. I am grateful for the support I have received from Foreign Minister Payne in the past, and I will continue to reach out to Australia for assistance in the future. But when it seeks to engage, Australia should be able to go beyond the rhetoric of condemnation and actually impose a cost on behaviour that it deplores.

SECOND, adopting a new law would allow Australia to be a global human rights leader.

'Magnitsky' legislation would allow Australia to work with key states to respond to mass atrocities. Because sanctions are imposed by individual countries, Australia could act even though it does not have a permanent seat on the UN Security Council, and even when Council action is stymied. It can form part of a 'coalition of the committed': working with other leading governments that are determined to make progress on human rights, and act together to create accountability for abuse. At a time when authoritarian leaders are becoming more united, and innovative in finding ways to *abuse* human rights, surely governments that are *defending* human rights should do the same. Yet so far only three states – the US, Canada and the UK – have robust global powers to impose targeted sanctions on human rights grounds. I think it's time that Australia joined the club.

THIRD, Australia can adopt a new law that becomes a model for other democracies.

Existing legislation in the US, UK and Canada provides a roadmap for a new law. Australia can build on this and introduce its own law that will serve as a model for others - including European states currently considering similar legislation. My written report highlights two 'lessons learned' from the practice so far: first, legislation should provide a basis for action that is *broad enough* to counter the types of human rights violations that are actually being perpetrated around the world; and second, legislation should aim to reduce the scope for selectivity and abuse in the selection of sanctions targets.

- More specifically I believe that legislation should allow for the imposition of sanctions in response to any serious abuse of international human rights law or international humanitarian law.
- I believe that sanctions for such 'serious abuse' should mean not only responding to extra-judicial killings and torture but also, for instance, sexual violence; corruption; persecution on grounds of race, religion or sexuality; detention on false charges, and silencing of the media.
- I believe that sanctions should apply not only to individuals but also to *companies*; *not only* to government officials but also to *terrorists* and businesspersons; *and* to the network of collaborators who facilitate their crimes.
- And I believe that legislation should seek to limit the extent to which sanctions powers can be *misused*. So, in addition to highlighting the need to have adequate due process protections in place, I have recommended that governments establish an independent expert committee that is responsible for recommending targets. This could improve the objectivity of the process and create space for governments to impose sanctions even against nationals of states that may be important political allies or trading partners.

Today only a handful of countries have laws that allow sanctions to be imposed for global human rights abuses. Which means that one of the most promising tools we have for enforcing human rights is not being used to meet some of the most serious global challenges we face. What you are considering in this inquiry is the opportunity for Australia to lead with a new paradigm: that when human rights are under attack, targeted sanctions will be a counterattack. That victims can expect accountability, not impunity. You are writing your country's history. So let this be a new chapter in which Australia is a global leader on human rights.

Thank you.