



Canada's Justice for Victims of Corrupt Foreign Officials Act ("Sergei Magnitsky Law")

CIVIL SOCIETY SUBMISSION GUIDE
(WITH SAMPLE TEXT)



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Acknowledgements

This guide was created by the International Justice and Human Rights Clinic at Peter A. Allard School of Law, University of British Columbia and Human Rights First. We are grateful to members of the Global Magnitsky Coalition for assistance in its development, to Global Affairs Canada for its input, and to members of civil society who make use of the guide in the spirit of combatting corruption and promoting universal human rights.

This guide does not represent the official position of the Allard School of Law, the University of British Columbia or the Government of Canada and submissions made using this guide are not binding on the Government of Canada.

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Introduction

Human Rights First and the International Justice and Human Rights Clinic at the Allard School of Law created this guide as a guide for individuals and civil society organizations interested in submitting evidence-based sanctions recommendations to the Canadian government pursuant to the Justice for Victims of Corrupt Foreign Officials Act, S.C. 2017, c. 21 (Can.) (the “JVCFOA,” otherwise known as the “Sergei Magnitsky Law”). The JVCFOA allows the Canadian government to institute asset freezes and other financial prohibitions against foreign nationals responsible for either corruption or gross violations of human rights. Listed individuals, other than permanent residents, are also inadmissible to Canada under the Immigration and Refugee Protection Act, S.C. 2001, c. 27 (Can.).

The guide is structured using a dossier framework that those submitting under the JVCFOA are advised to follow. It includes advice regarding best practices (*in italics*) as well as sample language contained within the body of each submission section. The sample language included is intended as a guide for tone and structure and is not applicable to all cases.

If disclosure of information provided in submissions under the JVCFOA may compromise the safety of individuals, those submitting should request an exemption from disclosure of information under Sections 17 and 19 (1) of the Access to Information Act R.S.C 1985. C. A-1 (“AIA”). When relevant, include at the beginning of your submission, the following language: “We request protection from disclosure under sections 17 and/or 19(1) of the Access to Information Act R.S.C 1985. c. A-1”.¹

Where to Submit Your Case:

Canada’s Minister of Foreign Affairs administers the JVCFOA. Finalized submissions should be sent to Global Affairs Canada at: sanctions@international.gc.ca or:

Global Affairs Canada
Sanctions Policy and Operations Coordination Division (PER)
125 Sussex Drive
Ottawa, Ontario
Canada K1A 0G2

Telephone (toll-free): 1-833-352-0769
Telephone (local): 1-343-203-3975
Fax: 1-613-995-9085

Note that you are unlikely to receive a response or acknowledgement of your submission.

¹ Global Affairs Canada has confirmed that exemptions to Canada’s Access to Information Act, including those pertaining to safety of individuals (s. 17) and personal information (s. 19(1)) apply to submissions made under the JVCFOA.

**SUBMISSION TO THE CANADIAN MINISTER OF FOREIGN AFFAIRS
RECOMMENDING SANCTIONS FOR INVOLVEMENT IN GROSS
VIOLATIONS OF HUMAN RIGHTS AND/OR CORRUPTION**

SUBMISSION MADE UNDER:

**THE JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT
(SERGEI MAGNITSKY LAW) OF 2017**

SUBMITTED BY:

[Name of Civil Society Organization or Individual]

SUBMISSION CONTACT NAME:

[Name]

[Email]

[Telephone Number]

INFORMATION ABOUT SUBMITTING ORGANIZATION

** Provide a brief description of your organization that includes an explanation of the relevant link between your organization and the information in the casefile. Be sure to mention previous significant interactions with Canadian government offices.*

** Where applicable, include information regarding partner organizations that contributed to the casefile.*

SAMPLE TEXT

Human Rights for Generica (HRG) is a nonpartisan international human rights organization established in 2000 and based in Metropolis and Cosmopolis. We document and report on abuses by police and other security forces in Generica (see our reporting here [hyperlink “here” with relevant link]). Representatives from HRG testified before the Canadian Parliament on January 1, 2018 on the human rights crisis in Generica. We have also briefed officials from the United Nations on several occasions, see here and here.

This submission was prepared in partnership with International NGO X.

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Section 1. Case Summary

** The “Case Summary” is a narrative synopsis of your submission that, like the below sample text, should fit on a single page. The Case Summary is an important advocacy tool that, with your permission, will be provided to officials in the Canadian government’s executive and legislative branches, as well as applicable foreign governments and non-state stakeholders.*

** The purpose of the Case Summary is to provide decision makers with a concise presentation of the facts contained in your submission, including information related to the context and facts of the alleged acts of corruption and/or serious human rights abuses. In one page, it should articulate the liability of the listed perpetrator(s) for the identified crimes and provide a brief justification for why the imposition of the recommended sanction would be appropriate and effective.*

SAMPLE TEXT

Country: Generica

Perpetrators (2): **Colonel John Smith** (a.k.a. Jonathan Smith, a.k.a. Johnny Smith), Director-General of Ministry of Security (July 2016 – Present); **Colonel Edward Doe**, Director of Criminal Interrogation (Jan. 2015 – Present).

Summary:

Colonel John Smith and **Colonel Edward Doe** are senior officers within the Generic Security Service (GSS), a component of the Ministry of Security (MoS) of the People’s Republic of Generica. As senior officers of the GSS, **Colonel Smith** and **Colonel Doe** are responsible for the arbitrary detention and torture of political prisoners.

The GSS is the domestic intelligence agency of the Generican government and is responsible for the suppression of political and popular dissent in the country. According to reports by credible international human rights organizations and interviews with multiple survivors of GSS abuse, the GSS operates a network of torture facilities throughout Generica. In these facilities, GSS officers and their subordinates subject individuals to various forms of torture, including severe beatings, sleep deprivation, starvation, prolonged detention in stress positions, exposure to extreme cold and heat, sexual abuse, and electric shock. GSS detainees are most often tortured for the purpose of extracting coerced confessions that are used in sham judicial proceedings in which torture victims are convicted on trumped up charges such as “participating in protests,” “illegal assembly” and “terrorist activity.”

Smith and **Doe** have served as senior officers within the GSS for several years and are directly involved in the operation of the GSS torture program. Due to their leadership positions within the GSS and the frequency and pervasiveness of torture at GSS facilities, **Smith** and **Doe** knew, or should have known, that units under their command were involved in the perpetration of gross violations of human rights. Additionally, credible evidence demonstrates that neither **Smith** nor **Doe** took steps to either halt the abuses or to investigate them in a genuine effort to impose

punishment on those directly engaged in the torture of detainees. As leaders of units engaged in the commission of gross violations of human rights, **Smith** and **Doe** should be sanctioned by Global Affairs Canada under the Justice for Victims of Corrupt Foreign Officials Act (JVCFOA).

The sanctioning of **Smith** and **Doe** will serve two of Canada's key foreign policy priorities. First, the sanctions will reaffirm the Canadian government's commitment to holding perpetrators of gross violations of human rights accountable. It will send a clear message to the Generican government that Canada will not tolerate egregious abuses of human dignity committed against citizens peacefully exercising their fundamental human rights. Second, it will pressure the Generican government to suspend a policy that is directly undermining Canada and NATO's counterterrorism and peacekeeping efforts regionally. Debriefs of Generican fighters returning from the Middle East show that roughly 80% of radicalized militants elected to take up arms due to a sense of personal and communal grievance driven by the Generican government's repressive policies. Sanctioning members of the GSS who are integral to its torture program would send a powerful signal that the Canadian government finds the Generican government's actions not only illegal, but also strategically counterproductive.

Section 2. Perpetrator Information

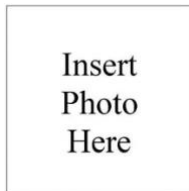
** Note that only natural persons can be designated under the JVCFOA. This means that, unlike Magnitsky regimes in other jurisdictions, entities cannot be designated in Canada.*

** Be consistent in names and roles and use formal names to the extent possible. Include any and all known aliases (see sample text for examples).*

** When available, pro bono counsel should run the perpetrators through World-Check or a similar screening database to obtain any additional identifying information that may be available.*

** Where the submission alleges responsibility due to an individual's status as a leader or official of an entity that perpetrated the alleged acts, the NGO should seek to include an organizational chart and as much other background information as is available to illustrate the manner in which officials within various entities or departments have authority over the ultimate perpetrators of the human rights abuse or corruption.*

SAMPLE TEXT



Full Legal Name of Perpetrator: Colonel John Smith (a.k.a. Jonathan Smith, a.k.a. Johnny Smith)

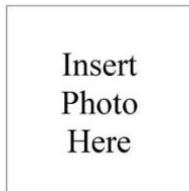
Country: Generica

Title or Position: Director-General of Ministry of Security (since July 2016); former Director of the Directorate of Criminal Interrogation (2015)

Date of Birth: 12/14/1971

Other Known Personal Identifiers (place of birth, passport number, address, etc): located in Metropolis, Central Province; Passport 66666666; Generica identification number 3333333

Past Travel to Canada: Yes, frequent visits for tourism, including at least November 2016, August 2017, and January 2018



Full Legal Name of Perpetrator: Colonel Edward Doe

Country: Generica

Title or Position: Director of the Directorate of Criminal Interrogation (since January 2015)

Date of Birth: 10/09/1980

Other Known Personal Identifiers (place of birth, passport number, address, etc): located in Metropolis, Central Province; Passport 999999999; Generica identification number 22222222

Past Travel to Canada: Unknown

Section 3. List of Known Assets and Facilitators Controlled by Perpetrators

** A significant consideration for Global Affairs Canada in determining the value of an individual sanction action is understanding the extent of financial assets owned or controlled by the alleged perpetrator that can be frozen, blocked, or otherwise disrupted. Such assets can include (but are not limited to): bank accounts; real property; luxury goods (i.e., yachts, sports cars, watches, collector’s items, etc.); and ownership, stock shares, or other valuable interest in businesses.*

** Global Affairs Canada prioritizes cases of “network sanctions,” or cases where they are able to tie together multiple perpetrators and facilitators in a criminal enterprise to target holistically. Everything NGOs can do to flesh out the Canadian government’s understanding of the players in a network, including creating network maps or other graphics where applicable, will significantly strengthen the case to illustrate the manner in which the perpetrators have authority over the human rights abuses or corruption.*

SAMPLE TEXT

List of Assets Associated with Colonel John Smith:

Description of Asset	Nexus to Perpetrator	Location of Asset	Value of Asset
Bank account at Generica National Bank (GNB)	Owned by perpetrator	GNB is incorporated in Central Province, Generica	Unknown
Residential property in Toronto, ON	Property owner listed as wife of perpetrator	123 Toronto Street Toronto, ON M4N 3M6	Appraised in 2016 at \$35 million USD
Luxury yacht	Reportedly owned by perpetrator ²	Unknown, previously docked in Barcelona	Reportedly purchased for \$60 million USD ³

List of Facilitators Associated with Colonel John Smith:

Name of Facilitator	Bio identifiers	Relationship to Perpetrator
Jane Smith	Nationality: Generica DOB: 1/2/1980	Wife of perpetrator, holds property on behalf of perpetrator in her name
Juan Doe	Nationality: Spain DOB: 2/1/1970	Agent, buys properties and procures contracts on perpetrator’s behalf. ⁴

List of Assets Associated with Colonel Edward Doe:

Edward Doe has no known assets.

List of Facilitators Associated with Colonel Edward Doe:

Edward Doe has no known facilitators.

² See News Report A.

³ *Ibid.*

⁴ See Spanish Investigation Report B.

Section 4. Factual/Contextual Background

** A brief description that provides necessary contextual information to understand the nature of the crimes and the individual perpetrators' involvement in committing them. Often this will include a brief history of the current political regime and general background information on a long-standing pattern of abuses.*

** This section should NOT go into deep detail regarding the crimes themselves, as this will be explained later in the document. Instead, use this section to set the table upon which the case will be further elaborated in the following sections.*

** When ending this section, consider including a brief conclusion that summarizes the culpability of the listed perpetrators.*

SAMPLE TEXT

The Generic Security Service (GSS) is organized under the Ministry of Security (MoS) of the People's Republic of Generica, as reflected in the attached MoS Organizational Chart. Human Rights for Generica (HRG) has compiled the details of individual cases of torture by the GSS, which are attached as **Annex A**.

As demonstrated through these individual cases, the GSS has engaged in a pattern and regular practice of human rights violations in Generica over an extended period of time, including routinely throughout the past five years.⁵ The GSS has targeted in particular individuals who have taken part in peaceful protests and/or who have expressed their opposition to the Generican government on social media.⁶ The pattern shows that individuals are arrested and brought to the GSS, where they are tortured for a number of hours or days, exceeding multiple months in some cases. The torture inflicted by the GSS has regularly included severe beatings, sleep deprivation, threats to family members, withholding food and water, forced standing and other stress positions, exposure to dangerously cold temperatures, sexual abuse and electric shock.⁷ HRG has confirmed that at least one of the tortured individuals died in GSS custody. Detainees are most often tortured for the purpose of coercing a confession (which most claim was false and only given to end the torture), which is used in the subsequent trial against them and results in their conviction. Charges generally relate to domestic offenses, including “participating in protests” and “illegal assembly,” as well as charges of “terrorist activity,” the validity of which has been called into question by credible UN experts and human rights organizations.⁸ Some of the detainees subjected to these abuses have been as young as 15. Life imprisonment and death sentences are often imposed as a result of these confessions coerced through torture.⁹

⁵ Citation with online link, if possible. Sample text: For a general overview of the GSS's pattern of torture and other forms of human rights abuses, see NGO Report A, NGO Report B, UN Report C, and UN Report D.

⁶ See NGO Report A, p. 2 and UN Report C, p. 5.

⁷ For details, see NGO Report B, p. 4.

⁸ UN and NGO with online links, if possible.

⁹ See NGO Report D, p. 15-16.

The individuals recommended for sanction in this submission are both current and former high-ranking officers within the MoS or GSS. As required for designation under the JVCFOA, each of the individual perpetrators named in this submission is a foreign national; moreover, as high-ranking government officials, they both act on behalf of the Generican state. Furthermore, the evidence discussed in this submission confirms that there is a pattern and practice of gross violations of human rights by the GSS that could exist only if condoned by officials at all levels of authority. Due to the widespread and regular nature of these abuses, and the fact that these incidents of torture have been well-known, well-documented and have occurred repeatedly for a period of many years, HRG submits that each of the individuals recommended for sanction were knowingly complicit in gross violations of human rights and knew, or should have known, that the government entities that they led were consistently engaged in the commission of gross violations of human rights. The listed perpetrators also failed to take steps to halt the abuses or to investigate them in a genuine effort to impose punishment on their subordinates who engaged in gross human rights violations. As such, HRG recommends these individuals for inclusion on the JVCFOA sanctions list.

Section 5. National Interest Argument & Explanation of Foreseeable Impact

** Given that use of the JVCFOA sanctions authority is elective, and that the JVCFOA is only one of many tools in Canada’s diplomatic toolbox, the Canadian government should be convinced that it is in Canada’s national interest to sanction a particular individual.¹⁰ Use this section to assess and describe the foreseeable impact of a sanctions designation in line with the overarching goal of the JVCFOA: to combat impunity by holding perpetrators of gross human rights violations and acts of significant corruption to account.*

** One way to think through this is to put yourself in the shoes of a Canadian government official and assess how sanctions against the targeted perpetrator would advance a comprehensive Canadian strategy affecting Canada’s bilateral relationship with the country, Canada’s strategic position in the region, and the international perception of Canada more broadly—while highlighting the value Canada places on protecting human rights, equality, and the rule of law and impugning corruption. A strong application will explain why the JVCFOA is the correct tool to wield in a specific situation by clearly laying out how sanctioning a targeted perpetrator will achieve a desired result in line with Global Affairs Canada’s policy priorities.*

** While the rationale for a particular designation should include that the Canadian government should uphold its stated “commitment to promoting international justice and respect for human rights” (as noted in the preamble to the JVCFOA), the most compelling arguments will also include why a particular designation will work to advance Canadian interests, diplomacy, and international peace and security. In addition to describing the threat posed by the targeted perpetrator(s) to citizens, democratic ideals, and the global financial system, such arguments could address the ways in which sanctioning a particular individual could send a targeted message to a government, government faction, or military unit; isolate an individual spoiler; curb illicit finance and other forms of corruption; limit future human rights violations within a particular unit; improve a security situation; and/or provide leverage in a diplomatic discussion. The summary of impact should also seek to explain how sanctioning the perpetrator(s) in question could deter similarly situated actors from engaging in gross violations of human rights and/or corruption.*

** As applicable, it may be worth highlighting a number of other attributes. First, Global Affairs Canada prioritizes opportunities to deploy sanctions as part of a multilateral effort. Therefore, if countries with similar legislation have sanctioned the targeted perpetrator(s), this section should include that information. Second, and relatedly, the Canadian government is more likely to impose sanctions quickly where there is international consensus and condemnation of particular perpetrators, such as where abuses have arisen in the context of a crisis with international proportions. If this describes your case, include in this section evidence of the international consensus and how speedy designations could help to put an end to the crisis. Third, cases where corruption has been demonstrated are more likely to receive sanctions. Finally, if an individual is connected to a situation which has previously elicited sanctions under similar Canadian*

¹⁰ The Treasury Board Secretariat has defined national interest as “the security and the social, political and economic stability of Canada.” Treasury Board Secretariat, “Glossary”, available at: <https://www.tbs-sct.gc.ca/pol/glossary-lexique-eng.aspx#glos-lex-N>.

legislation—particularly the Special Economic Measures Act, S.C. 1992, c. 17 (Can.) or the United Nations Act, R.S.C., 1985, c. U-2 (Can.)—those prior related measures should be mentioned.

SAMPLE TEXT

It is in the Canadian government’s interest to ensure that torture and other prohibited forms of ill treatment will not go unnoticed or unpunished. The GSS’s abuses are well-known and well-documented. The designation of one or more high-ranking individuals within the GSS would demonstrate Canada’s commitment to holding human rights violators accountable, protecting the exercise of fundamental human rights including the freedom of expression and assembly, and ensuring respect for international law.

These designations are aligned with the aims set out in the JVCFOA, which articulates “Canada’s support for human rights and . . . responsibility to protect activists who fight for human rights.”¹¹ Torture for any purpose unacceptably degrades human dignity. Torture of individuals engaged in lawful peaceful protest undermines confidence in the rule of law and represents a brazen assault on the rights fundamental to a functioning democracy. Discarding the rule of law is a threat to global peace and security when practiced by our enemies, but an even greater threat when openly tolerated by our allies. Notwithstanding Generica’s cooperation with Canada and her allies on regional security initiatives, the GSS is clearly engaged in systematic and widespread human rights violations, which are undoubtedly the type of activity the Canadian Parliament intended to target in passing the JVCFOA. The JVCFOA states that “all violators of internationally recognized human rights should be treated and sanctioned equally throughout the world.”¹² GSS designations would send a strong message that Canada does not employ targeted sanctions as a method of impugning our adversaries but will hold even our closest allies to account when it comes to gross violations of human rights.

Furthermore, as described in multiple analyses conducted by credible analysts, Generica’s domestic counterterrorism policies, including instances of torture perpetrated by members of the GSS, are having the effect of alienating, and in some cases radicalizing, members of Generica’s minority population.¹³ Debriefs of Generica fighters returning from the Middle East have shown that roughly 80% of radicalized militants elected to take up arms due to a sense of personal and communal grievance driven by the government of Generica’s repressive policies.¹⁴ Sanctioning members of the GSS shown to have engaged in or directed torture would send a powerful signal that the Canadian government finds the government of Generica’s actions not only illegal, but also strategically counterproductive. Given Generica’s key role in the fight against regional violent extremism and the security partnership with Canada and her allies, the Canadian government could consider combining sanctions designations with diplomatic outreach and security sector assistance aimed at strengthening elements of Generica’s security services known not to have engaged in torture.

¹¹ Justice for Victims of Corrupt Foreign Officials Act, S.C. 2017, c. 21, Preamble.

¹² *Ibid.*

¹³ See, for example, Think Tank Report A.

¹⁴ See Think Tank Report B, pp 6-7.

Section 6. Case Type

** It is important to articulate the specific basis for your recommendation under Canadian law. The JVCFOA authorizes the Canadian government to impose targeted sanctions against foreign nationals who are responsible for, or complicit in, gross violations of human rights or acts of significant corruption. Use this section to specify the provision under which your recommendation falls.*

** The JVCFOA, Section 4(2), authorizes the Canadian government to impose sanctions for two types of conduct:*

- *Gross Violations of Human Rights*

The Canadian government may impose sanctions under the JVCFOA against (a) a “foreign national,” defined as an individual who is neither a citizen nor a permanent resident of Canada,¹⁵ (b) who “is responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights,”¹⁶ as well as against a foreign national who “acts as an agent of or on behalf of a foreign state” in relation to one of these activities.¹⁷

The JVCFOA appears to limit the statute’s applicability to gross violations of human rights that are perpetrated against two specific classes of persons—(1) whistle-blowers against foreign public officials, and (2) human rights defenders, or individuals who “obtain, exercise, defend or promote internationally recognized human rights and freedoms.”¹⁸ However, these two specific classes of persons are interpreted broadly in practice. The Canadian government has sanctioned individuals for the commission of GVHRs against individuals who are not specifically identified as either whistle-blowers or human rights defenders.

- *Acts of Significant Corruption*

The Canadian government may impose sanctions under the JVCFOA against EITHER:¹⁹

- *(i) a “foreign public official or an associate of such an official” (ii) who is “responsible for or complicit in ordering, controlling or otherwise directing” acts of significant corruption; OR*

¹⁵ Under the Immigration and Refugee Protection Act, a permanent resident is defined as “a person who has acquired permanent resident status and has not subsequently lost that status under section 46.” Justice for Victims of Corrupt Foreign Officials Act, S.C. 2001, c. 21, s. 2(1).

¹⁶ Justice for Victims of Corrupt Foreign Officials Act, S.C. 2001, c. 21, s. 4(2)(a).

¹⁷ *Ibid.*, s. 4(2)(b).

¹⁸ *Ibid.*, s. 4(2)(a).

¹⁹ *Ibid.*, s. 4(2)(c) and (d).

- (i) a “foreign national”(ii) who has “materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of” acts of significant corruption.

Acts of corruption, for the purposes of the JVCFOA, include “bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources.”

Importantly, in order to be considered sanctionable activity, the targeted perpetrator’s corrupt acts must amount to acts of significant corruption “when taking into consideration, among other things, their impact, the amounts involved, the foreign national’s influence or position of authority or the complicity of the government of the foreign state in question in the acts.”

** The JVCFOA authorizes the Canadian government to sanction foreign nationals, i.e. individuals who are neither citizens nor permanent residents of Canada. Only natural persons, and not corporate or government entities, can be sanctioned directly under the JVCFOA. However, the JVCFOA does authorize the Canadian government to restrict or prohibit corporate entities from doing business with sanctioned individuals. Under the JVCFOA there are three types of possible prohibitions that can be ordered by the government: first, Canadians and residents cannot deal directly or indirectly with any property of a sanctioned foreign national;²⁰ second, Canadians and residents cannot facilitate any financial transactions or provide financial services or any other kind of service for the sanctioned foreign national;²¹ third, Canadians and residents cannot make any property available in Canada or any property owned by them outside Canada to a sanctioned foreign national.²² Regulations made under the JVCFOA have in the past prohibited all three activities.²³ Furthermore, whether an individual’s conduct renders them subject to sanction under the JVCFOA turns on the nature of both the conduct and the offense.²⁴*

- *Direct Liability*

- *Gross Violations of Human Rights*

Any foreign national can be sanctioned under the JVCFOA if they are found to be “responsible for, or complicit in,” gross violations of human rights.

While most individuals sanctioned under this provision will be state actors due to the heightened standard for gross violations of human rights, the JVCFOA does not require that the individual be a state actor or be an agent of or acting on behalf of a state actor.

²⁰ *Ibid.*, s. 4(3)(a).

²¹ *Ibid.*, s. 4(3)(b)-(d).

²² *Ibid.*, s. 4(3)(e).

²³ Justice for Victims of Corrupt Foreign Officials Regulations SOR/2017-233, available at: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-233/FullText.html>.

²⁴ Justice for Victims of Corrupt Foreign Officials Act, S.C. 2017, c. 21, s. 4(2)(c).

- *Acts of Significant Corruption*

Only “a foreign public official or an associate of such an official” may be sanctioned for being “responsible for or complicit in” acts of significant corruption under the JVCFOA.

However, the Canadian government has expressed in a prior meeting with civil society organizations its willingness to adopt a broad definition of “associate.” An associate can thus include non-state actors involved in significant corruption where there is a connection, or nexus, to a current or former state actor.

- *Indirect Liability*

- *Gross Violations of Human Rights*

The JVCFOA contains no textual commitment to authorizing sanctions on foreign nationals who cannot be proven to be directly responsible for or complicit in gross violations of human rights—where the individual did not directly participate in the sanctionable acts themselves.

- *Acts of Significant Corruption*

An individual may be sanctioned under the JVCFOA for acts of significant corruption where he or she has “materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of,”²⁵ a sanctionable act of corruption.

SAMPLE TEXT

HRG submits that the listed perpetrators are subject to sanction under the Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a) as foreign nationals who are responsible for or complicit in activity that amounts to gross violations of internationally recognized human rights against those who seek to promote human rights abroad.

Alternatively, HRG submits that the listed perpetrators are subject to sanction under the Justice of Victims of Corrupt Foreign Officials Act, Section 4(2)(b) as foreign nationals who, as agents of or on behalf of a foreign state, in activity that amounts to gross violations of internationally recognized human rights against those who seek to promote human rights abroad.

²⁵ *Ibid.*, s. 4(2)(d)

Section 7. Summary of Evidence

** Provide a narrative of the facts surrounding the case you are recommending to the Canadian government, supplemented by footnoted links to supporting documents and/or annexes for documents not in the public domain. When providing supporting documentation, it is important to keep in mind that the Canadian government will not issue designations based solely on classified information and will only move forward with designations when they can be supported by credible open-source information.²⁶*

** Include a summary description of the NGO's sources and methods of obtaining the factual information included in the submission (e.g., first-hand victim accounts, interviews with family members, documents reviewed, etc.).*

** Strong cases will include as many unique sources of credible, verifiable information corroborating your claim as possible. The Canadian government prefers when evidence can be obtained and corroborated from multiple sources (in other words, a single NGO's internal information concerning a human rights violation, combined with that NGO's formal, publicly available report on the same incident(s), is likely to be viewed as a single source, and thus represent a weaker case than if the NGO's reporting can be combined with, e.g., that of a UN investigative committee).*

** Where multiple perpetrators are submitted, it is helpful to detail the role(s) of each alleged perpetrator with some specificity. If the submission relies on the perpetrator's role as an official of an entity which engaged in, or whose members engaged in, gross violations of human rights or corruption, if possible, include the perpetrator's job description and an organizational chart in order to establish the line of authority.*

** For cases involving gross violations of human rights, or cases in which you are recommending that a leader or official in a particular unit be designated on account of that unit's involvement in human rights violations, your documentation should include:*

- *Details on the nature of the violation(s) and victim(s), including why the actions in question qualify as "gross violations of human rights." This should include any evidence demonstrating that actions alleged to have been committed by the perpetrator were not unique to the specific case(s) documented, but are indicative of a wider pattern of abuse.*
 - *In order to qualify as a gross violation of human rights, evidence must show that an abuse is part of a consistent pattern of conduct. It is easier to meet this threshold in cases where the abuse involves some form of state conduct, although a consistent pattern of abuse by a non-state actor may also rise to the requisite level. If the targeted perpetrator is a non-state actor, it is even more important to detail the systemic nature of the violations. The strongest cases against a particular perpetrator will therefore include multiple, independent accounts of the alleged*

²⁶ This is in part so that the evidentiary basis for a designation can be examined in court in the event that the designation is subject to litigation in the future.

crimes (such as through witness or victim testimonies), coupled with credible open source reporting of a more general nature on abuses known to have occurred.

- *A case file should clearly identify the victim or class of victims. While the text of the JVCFOA appears to require that sanctionable human rights violations target whistle-blowers or human rights activists/defenders, the Canadian government has not adhered strictly to this requirement in practice. If the victim or class of victims includes whistle-blowers and/or human rights defenders, describe that activity. If not, describe how the victim(s) were expressing or exercising their fundamental rights and freedoms.*
- *The relationship between the perpetrator and the documented human rights violation(s).*
 - *If the targeted perpetrator directly participated in committing the violations, be sure to provide evidence demonstrating that this is the case.*
 - *As mentioned in the previous section, while the JVCFOA contains no textual commitment to sanctioning leaders or commanders who are indirectly liable for their subordinates' violating activity, the Canadian government has expressed its willingness to sanction individuals under a command theory of responsibility. If your targeted perpetrator is a leader or commander, provide as much evidence as possible to demonstrate that the high-level alleged perpetrator directed the abuse; knew about or could not possibly have not known about it; and declined to stop it, and/or declined to investigate the abuse after it occurred.²⁷*

** For corruption cases, or cases in which you are recommending that a person be designated on account of their involvement in corruption, your documentation should include:*

- *Details on the nature of the corrupt acts, including whether they included bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources.*
 - *The strongest cases against a particular perpetrator will include both direct and circumstantial evidence demonstrating knowledge and intent to commit a corrupt act. In addition to open source material, documentation may include banking records, witness statements, victim statements, autopsy reports, or copies of other evidence not in the public domain.*
- *An explanation of why the above acts of corruption amount to acts of significant corruption, taking into consideration the impact of the corrupt acts identified, the amounts of money involved, the targeted perpetrator's influence or position of authority, and/or the complicity of the government of the foreign state in question.*

²⁷ See International Committee of the Red Cross, "Rule 153. Command Responsibility for Failure to Prevent, Repress or Report War Crimes," Customary International Humanitarian Law, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

- *The strongest cases will demonstrate that the targeted perpetrator’s activities have had a harmful economic impact on the country in which the perpetrator operates, that the perpetrator enjoys substantial influence or authority in the foreign state. Evidence in this section might include estimates by international financial institutions or NGOs of the financial cost of corruption (in terms of GDP, tax revenue, or other metrics) in the country, particularly if such statistics can be tied specifically to the perpetrators’ activities or, failing that, to the sector in which the perpetrator operates.*
- *Information demonstrating that an alleged corrupt actor is a foreign public official or an associate of such an official, or that they have materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, the corrupt acts.*

The Canadian government has expressed in a prior meeting with civil society organizations its willingness to adopt a broad definition of “associate.” An associate can thus include non-state actors involved in significant corruption where there is a connection, or nexus, to a current or former state actor. If the alleged corrupt actor is not a public official, it is important to lay out in as much detail as possible the ways in which a public official may have been involved in or have benefited from the act(s) in question.

SAMPLE TEXT

The GSS has previously been identified by civil society groups as responsible for frequent instances of torture and ill-treatment in Generica.²⁸ HRG has documented individual cases in **Annex A**, with the most recent reported instance of torture taking place earlier this year. Many of the individuals were arrested without a warrant, with multiple individuals reporting that the arresting forces wore civilian clothing or were otherwise unidentifiable. These officers would then transport the individuals to the custody of the GSS for interrogations, during which they would subject the individuals to torture. The methods of torture most frequently employed are beatings, electric shock, sexual assault or threats of rape, forced standing, stress positions, forced nudity, and sleep deprivation.

In addition to HRG’s documentation of individual cases, several other leading human rights organizations have identified the GSS as part of a pattern of human rights abuses. Human Rights International published a report in July 2016, detailing a number of human rights abuses in Generica, including torture by the GSS.²⁹ HR International noted that “[m]any detainees and former detainees allege they were tortured while under interrogation by the GSS at their facility in Metropolis.”³⁰ HR International’s report specifically corroborates some of HRG’s individual

²⁸ See NGO Reports A, B, C, and D.

²⁹ Citation with link to online availability, if possible.

³⁰ Citation with link to online availability, if possible.

cases, including those of Jane Doe (¶2 in Annex A)³¹ and John Doe (¶3 in Annex A).³² Additionally, Human Rights Today published a report in 2018 which documented several cases of torture by the GSS in 2016 and 2017.³³ Both the Human Rights International and Human Rights Today reports detail similar instances of torture, including beatings, electric shock, sexual assault, and threats of rape, accompanied by demands from the interrogators to confess to criminal acts. Other instances of individual acts of torture have been reported by the Center for Human Rights, among others.³⁴

The United Nations has also addressed cases of torture by the GSS, through various communications from the Human Rights Council Special Procedures Offices on individual complaints submitted to the Special Procedures Offices (“SPOs”). As early as 2012, the SPOs were sending communications to Generica concerning reports of torture by the GSS—that year, two Special Procedures mandate holders sent an Urgent Appeal concerning the torture of John Doe by the GSS.³⁵ Following his torture, Mr. Doe was charged with “unlawful assembly,”³⁶ in blatant violation of the rights of freedom of expression and assembly. In a communication to the Generica government earlier this year, the Special Procedures office noted reports of the torture and ill-treatment of Jane Doe (¶2 in Annex A).³⁷ In another communication in 2017, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment detailed reports of abuse and torture committed by GSS officers in the case of James Smith (¶5 in Annex A).³⁸

Finally, investigative reporting undertaken by credible press outlets, including the *New York World* and German news weekly *Heute Zeitung* has independently corroborated instances of torture by the GSS, including in facilities known to have held Jane Doe and John Doe.³⁹

³¹ Cite.

³² Cite.

³³ Citation with online link, if possible.

³⁴ Citation with online link, if possible.

³⁵ Citation with online link, if possible.

³⁶ Citation with online link, if possible.

³⁷ Cite.

³⁸ Cite.

³⁹ Citation with online link, if possible.

Section 8. Application of Legal Standards to the Facts of the Case

** The application of relevant legal standards to the particular facts included in the submission may be left to pro bono counsel to complete.*

** Be sure to include discussion of any references to external definitions or sources that may be used to interpret the terms in the JVCFOA and application to any particular case. Where applicable, such definitions may be found in [relevant provisions of the Canadian Criminal Code](#) and international human rights and humanitarian treaties to which Canada is a party.*

** If there have been prior similar designations under the JVCFOA, or under other Canadian sanctions legislation—including the [Special Economic Measures Act](#), [the United Nations Act](#), and [the Freezing Assets of Corrupt Foreign Officials Act](#)—those should be discussed as well.*

** The roles of the individual perpetrators recommended for designation should be discussed in as much detail as possible, along with specific references to their wrongdoing where available. If individual perpetrators are recommended for sanctions based on their leadership position, take care to describe, with as much specificity as possible, their role and the extent to which they have (or had) control over and/or involvement in the activities of those who directly participated in abuses.*

SAMPLE TEXT

1. Gross Violations of Human Rights

The JCVFOA authorizes the Governor in Council to impose sanctions against a foreign national believed to be “responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights.”⁴⁰ The Canadian Criminal Code defines torture as “any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” by a government official for the purpose of obtaining information or punishing, intimidating, or coercing the person or for any reason based on discrimination of any kind.⁴¹ It is clear that the continuous and systematic abuses perpetrated by the GSS meet this standard.

The actions taken by individuals within the GSS (including those individuals listed as perpetrators) have shown a pattern of abuse, torture, and ill treatment that has continued from at least 2010 until the present. These actions constitute torture under the Canadian definition, as they were carried out by government officials acting under the color of law, and they were intentionally inflicted to cause severe physical or mental pain or suffering upon the individuals in their custody for the purpose of obtaining confessions, intimidation, and/or punishment. The Canadian statutory definition applies only to perpetrators and acts under the territorial or personal jurisdiction of Canada. As such, the international definition must also be considered, notably that found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁴⁰ Justice for Victims of Corrupt Foreign Officials Act, S.C. 2017, c. 21, s. 4(2)(a).

⁴¹ Criminal Code, R.S.C., 1985, c. C-46, s. 269.1(1).

(CAT), to which both Canada and Generica are states parties.⁴² The definition of torture under the CAT closely tracks its definition under Canadian criminal law, and therefore these actions meet the definition of torture under the CAT for the same reasons.

Furthermore, these activities were committed by government officials against individuals in Generica who were exercising their internationally recognized human right to freedom of expression and peaceful assembly. As such, JVCFOA sanctions would be especially appropriate and meaningful in this case.

2. Roles of the Individual Perpetrators

The JVCFOA may be used to sanction those individuals who are responsible for or complicit in gross violations of internationally recognized human rights. As explained previously, the GSS is organized under the Ministry of Security of Generica, as reflected in the attached Ministry of Security Organizational Chart. Each of the perpetrators named in this submission held an officer level or other leadership position within the Ministry of Security or the GSS specifically during the period in which the human rights violations detailed above were perpetrated.

Each of the perpetrators held a leadership position and directed their subordinates to carry out gross human rights violations. At the time of the commission of the offenses in question, a superior-subordinate relationship existed between the listed officials and those involved in the direct commission of the crimes described. Moreover, the evidence discussed in this submission confirms that there is a pattern and practice of gross violations of human rights by the GSS that could exist only if condoned by officials at all levels of authority. Due to the widespread and regular nature of these violations, and the fact that these incidents of torture have been well-known, documented, and occurred repeatedly for a period of more than several years, HRG submits that each of the named individuals were knowingly complicit in, and knew or should have known that the government entities they have led, or their subordinates within those entities, engaged in ongoing gross violations of human rights. Furthermore, the named individuals failed to take necessary measures to halt the violations or to investigate them in a genuine effort to impose punishment on the perpetrators.

⁴² *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature Dec. 10, 1984, art. 1(1) (entered into force June 26, 1987) U.N. Doc. A/RES/39/46, 1465 U.N.T.S. 85: “the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”.

Section 9. Discussion of Contrary Evidence/Arguments

** Do not omit any known contradictory, countervailing, or exculpatory evidence. Please note any such evidence and reasons why your case still meets the law’s legal standard—i.e., your case is sufficient to convince the Governor in Council that sanctionable activity has occurred.*

** Assume that any arguments and/or evidence that is public or available to the government of the designees’ country will be considered by Canada Global Affairs, the agency charged with reviewing these designations. As such, it is advantageous to address such arguments directly in these submissions as it is unlikely that you will receive another opportunity for rebuttal.*

** In particular, discuss why any contrary statements by the Government regarding their human rights record or efforts to address human rights complaints domestically should not be credited and provide citations to evidence.*

SAMPLE TEXT

HRG is not aware of any contradictory, countervailing, or exculpatory evidence concerning the alleged responsibility of Colonel John Smith and Colonel Edward Doe for acts of torture committed by GSS members under their command. While the government of Generica has routinely denied that members of the GSS commit torture,⁴³ HRG finds these claims lack credibility given the extensive documentation of such acts by credible bodies, as referenced throughout this submission. Furthermore, the justifications provided by the Generican government have been directly contradicted and shown to present inaccurate information by credible NGOs and news outlets.⁴⁴

⁴³ See, citation with online link, if possible.

⁴⁴ Citation with online link, if possible.

Appendix A: Converting U.S. Global Magnitsky Submissions into Canadian JVCFOA Submissions

This appendix describes how to convert submissions made under the United States’ Global Magnitsky Human Rights Accountability Act (the U.S. Magnitsky Law) and U.S. Executive Order 13818 (which implements it) to submissions that will meet Canada’s requirements under its Justice for Victims of Corrupt Foreign Officials Act (JVCFOA). Organizations that have previously used HRF’s [Global Magnitsky template](#) to submit cases to the U.S. government will note the similarities between this guide and that one, including their organization along the same nine part format. The sections below reference each of the nine sections outlined in the submission guide above.

Section 1: Case Summary

The national interest aspect of the Case Summary should reflect the differing national interest priorities of Canada vis-à-vis the U.S. See below (Section 5) for more information.

Section 2: Perpetrator Information

No change, although note that under the Canadian program only natural persons can be sanctioned, so any recommendations to the U.S. government that include sanctions against entities should be amended to remove those entities from the list of perpetrators. Note that those entities can and should still be included on the List of Assets/Facilitators where applicable (see Section 3).

Section 3: List of Known Assets and Facilitators Controlled by Perpetrators

No change.

Even if you have used this section to identify entities against which you are recommending that the U.S. government levy sanctions, those entries will be relevant to the Canadian government’s assessment of the individual perpetrator, their network, and the expected impact of imposing sanctions against them.

Section 4: Factual/Contextual Background

Make sure that this section, particularly if you have included in it a summary of liability of the targeted perpetrators, reflects that you are recommending sanctions under the JVCFOA rather than Executive Order 13818.

Section 5: National Interest Argument & Explanation of Foreseeable Impact

There will be significant overlap in the national interest portion regarding the desire to promote human rights abroad, democratic values and institutions, and security of the person. The same also holds for economic analyses pertaining to free and open marketplaces that could provide opportunities to Canadian businesses. However, a fully informed national interest argument should also consider any political and economic

impacts that are specifically Canadian, taking into account Canada’s unique relationship with the country and perpetrator in question. The departmental priorities found on the Global Affairs Canada website—which currently include revitalizing the rules-based international order; eradicating poverty; pursuing diversified, modern and inclusive trade; and strengthening Canada’s place in North America—may be helpful in constructing your national interest section, particularly in explaining how a particular sanction might help Canada meet its identified national priorities.⁴⁵

Section 6: Case Type

The precise wording of this section will need to be converted to reflect the Canadian legislation. The U.S. law applies different criteria and is broader in scope than the Canadian JVCFOA, as it allows the U.S. government to sanction even those who are “indirectly engaged” in “serious human rights abuse.” The Canadian law outlines four separate types of cases, roughly corresponding to certain provisions under U.S. Executive Order 13818:

JVCFOA Section 4(2)(a) (Roughly corresponding to EO 13818 sections 1(ii)(A) and 1(ii)(C)(1) as it pertains to 1(ii)(A)):

- (a) To be a foreign national responsible for, or complicit in, extrajudicial killings, torture or other gross 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 conscience, religion, thought, belief, opinion, expression, peaceful assembly and association, and the right to a fair trial and democratic elections.

JVCFOA Section 4(2)(b):

- (b) To be a foreign national acting as an agent of or on behalf of a foreign state in a matter relating to an activity described in (1).

JVCFOA Section 4(2)(c) (Roughly corresponding to EO 13818 section 1(ii)(B)):

- (c) To be a foreign public official or an associate of such an official, responsible for or complicit in ordering, controlling or otherwise directing acts of corruption — including bribery, the misappropriation of private or public assets for personal gain, the transfer of the proceeds of corruption to foreign states or any act of corruption related to expropriation, government contracts or the extraction of natural resources — which amount to acts of significant corruption when taking into consideration, among other things, their impact, the amounts involved, the foreign national’s influence or position

⁴⁵ Global Affairs Canada, *Plans at a glance and operating context*, available at: <https://www.international.gc.ca/gac-amc/priorities-priorites.aspx?lang=eng>.

of authority or the complicity of the government of the foreign state in question in the acts.

JVCFOA Section 4(2)(d) (Roughly corresponding to EO 13818 section 1(iii)(A)):

- (d) To be a foreign national who has materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of, an activity described in (3).

Section 7: Summary of Evidence

This section will be very similar in Canadian and U.S. submissions. However, tailoring the description of evidence to highlight items that are relevant to the particular wording of the Canadian law and national interest analysis will strengthen the submission. For example, where U.S. legislation demands credible evidence of “serious human rights abuse,” the Canadian legislation requires credible evidence of “gross human rights violations,” a higher standard which requires that the violations be found to be continuous or systematic. This distinction may require re-framing the evidence in the U.S. submission, conducting further research, or producing additional supporting information in order to meet the higher standard.

Furthermore, while the victim requirement of the JVCFOA has been broadened in practice, as noted above, you should be sure to include in this section any evidence you might have that the abuses were perpetrated against persons who were engaged in exposing illegal government activity or obtaining, exercising, defending, or promoting internationally-recognized human rights.

If you are recommending sanctions on the basis of significant corruption, your summary of the evidence should include additional information supporting your contention that the corrupt acts amount to acts of significant corruption, taking into account, “among other things, their impact, the amounts involved, the foreign national’s influence or position of authority or the complicity of the government of the foreign state in question in the acts.”

Section 8: Application of the Law to the Facts of the Case

Most international sources of definitions can be directly translated into the Canadian context, but references to domestic U.S. legislation should be replaced by references to the Canadian Criminal Code or other relevant legislation.

If you are recommending sanctions on the basis of gross violations of human rights, this section must describe how the abuses amount to gross violations of human rights by reason of their being part of a continuous or systematic pattern. Furthermore, this section should emphasize, as applicable, that the violations were perpetrated against victims engaged in whistle-blowing activities or otherwise obtaining, exercising, defending, or promoting internationally recognized human rights. Finally, if the targeted perpetrator is a government

official or leader of a government entity believed to have engaged in gross violations of human rights, be sure to lay out their responsibility under a command theory of liability.

If you are recommending sanctions on the basis of significant corruption, your description of the corrupt acts will need to be altered to clearly meet the higher standard contained in the JVCFOA, which requires that the acts be found to amount to acts of significant corruption by reason of their impact and other contextual factors.

Section 9: Discussion of Contrary Evidence/Arguments

Similar to the sections above, the analysis in this section may need to be adjusted to reflect the arguments you have made above.

Appendix B: Definitions

Definitions Pertaining to Human Rights Abuse:

1. Extrajudicial Killing:

Extrajudicial Killing under the Fourth Geneva Convention (ratified by Canada):

“the carrying out of executions without previous judgment by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”⁴⁶

2. Torture

Torture under Canada’s Criminal Code:

any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

(i) obtaining from the person or from a third person information or a statement,

(ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and

(iii) intimidating or coercing the person or a third person, or

(b) for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.⁴⁷

Torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Canada has ratified:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁴⁸

3. Cruel, inhuman, or degrading treatment

⁴⁶ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, Article 3.

⁴⁷ Criminal Code, R.S.C., 1985, c. C-46, s. 269.1(2).

⁴⁸ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature Dec. 10, 1984, art. 1(1) (entered into force June 26, 1987) U.N. Doc. A/RES/39/46, 1465 U.N.T.S. 85.

Cruel, inhuman, or degrading treatment as defined by the European Commission on Human Rights (not binding on Canada, though persuasive):

“inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable,” while “degrading” treatment grossly humiliates the individual before others or drives the individual to act against his will or his conscience.⁴⁹

4. Unlawful or arbitrary detention

Unlawful or arbitrary detention is defined by the International Criminal Tribunal for the Former Yugoslavia as occurring when these criteria are met:

1. An individual is deprived of his or her liberty.
2. The deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty.
3. The act or omission by which the individual is deprived of his or her physical liberty is performed by the [physical perpetrator] with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty.⁵⁰

Definitions Pertaining to Corruption:

1. Bribery

The Canadian Criminal Code defines bribery in relation to “judicial officers,” who are themselves defined as “holder[s] of a judicial office, or [members] of Parliament or of the legislature of a province,” as having occurred when an individual

- (a) being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by them in their official capacity, or
- (b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by that person in their official capacity.⁵¹

⁴⁹ European Commission on Human Rights, 1969: *The Greek Case*, (1972) Yearbook of the European Convention on Human Rights, at 186.

⁵⁰ Judgment, *Prosecutor vs. Krnojelac* (IT-97-25-T), Trial Chamber II, 15 March 2002, para. 115.

⁵¹ Criminal Code, R.S.C., 1985, c. C-46, s. 119(1).

Canada’s Criminal Code similarly defines bribery in relation to “officers,” themselves defined as “a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law,” as having occurred when and individual

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; OR

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).⁵²

Bribery of national public officials, when committed intentionally, is defined under the United Nations Convention Against Corruption (which Canada has ratified) as:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; OR

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.⁵³

The United Nations Convention Against Corruption defines bribery of foreign public officials or officials of public international bodies as, when committed intentionally:

(1) . . . the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; OR

(2) . . . the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.⁵⁴

2. Money Laundering/Transferring the Proceeds of Crime

⁵² Criminal Code, R.S.C., 1985, c. C-46, s. 120.

⁵³ *United Nations Convention Against Corruption*, 31 October 2003, GA res. 58/4, UN Doc. A/58/422.

⁵⁴ *Ibid.*

Under Canada’s Criminal Code the crime of “laundering the proceeds of crime” is committed if an individual:

uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- (a) the commission in Canada of a designated offence; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.⁵⁵

Money Laundering, or the “Transfer of the Proceeds of Corruption” is defined under the United Nations Convention Against Corruption as:

- (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; or
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.⁵⁶

⁵⁵ Criminal Code, R.S.C., 1985, c. C-46, s. 462.31(1).

⁵⁶ *United Nations Convention Against Corruption*, 31 October 2003, GA res. 58/4, UN Doc. A/58/422.